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WRITER'S DIRECT DIAL NUMBER

July 30, 1999

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

RECEIVED  
JUL 30 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: MM Docket 99-25

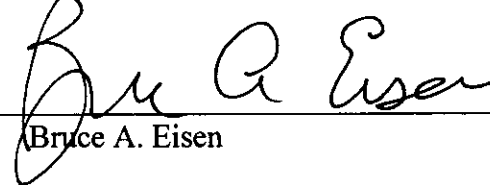
Dear Ms. Salas:

On behalf of WEOK Broadcasting Corporation, we are herewith filing an original and four copies of its Comments to the Commission's above-captioned Notice of Proposed Rulemaking, released February 3, 1999.

Should there be any questions concerning these Comments, kindly communicate directly with the undersigned.

Respectfully submitted,

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER, LLP

By:   
Bruce A. Eisen

Enclosure

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

RECEIVED  
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In the Matter of

Creation of a Low Power  
Radio Service

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MM Docket No. 99-25

TO: The Commission

**COMMENTS OF WEOK BROADCASTING CORPORATION**

WEOK Broadcasting Corporation ("WEOK")<sup>1</sup>, by its attorneys, hereby submits comments in response to the Commission's above-captioned Notice of Proposed Rulemaking, released February 3, 1999. In support thereof, the following is shown:

1. The Commission's Notice proposes to establish a new low power FM radio service ("LPFM") which would operate as (i) 1,000-watt primary service, and (ii) 100-watt secondary service. The Commission also sought comments on whether to establish a third "micro radio" class of low power radio service that would operate in a range of one to 10-watts on a secondary basis. The Notice results from the Commission's belief that LPFM stations "would provide a low-cost means of serving urban communities and neighborhoods, as well as populations living in smaller rural towns and communities." It further believes that the LPFM

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<sup>1</sup> WEOK Broadcasting Corporation is the licensee of Stations WEOK(AM)/WPDH(FM) at Poughkeepsie, New York. Affiliates of the licensee operate Stations WCZX(FM), Hyde Park, New York, and WZAD(FM), Wurtsboro, New York; WALL(AM) and WRRV(FM), Middletown, New York; WRRB(FM), Arlington, New York; and WKNY(AM) Kingston, New York.

stations would increase opportunities for new radio broadcast ownership and promote diversification of ownership and programming services, all to be accomplished without causing interference to existing full service FM radio stations in light of a collateral proposal to adopt new technical rules and spacing requirements.

2. This would not be the first time that a well intentioned Commission proposal advanced in order to increase broadcasting opportunities and diversity of ownership did nothing more than to invite disaster on the existing radio broadcast industry. While vigorous competition helps assure better service to the public, the Commission's past efforts in "Docket 80-90" demonstrate the danger of an over-zealous desire to create many new broadcast outlets with one stroke of the regulatory hand. When the Commission added over 600 FM channels to various communities around the country, it did so in the anticipation that the facilities would provide opportunities for broadcast licensing to previously disenfranchised American citizens who found it difficult to break into broadcasting as owners. See, Report & Order in BC Docket No. 80-90, 94 FCC 2d 152 (1980); see, also, First Report & Order, in MM Docket No. 84-231, 100 FCC 2d 1332 (1985) (subsequent history omitted). The Commission had suddenly and dramatically increased the potential for local FM radio service to the public. Moreover, the action was reported to serve the interests of 40% of the communities said to need additional minority-owned stations, as well as the interests of 26% of the locations desiring additional public radio stations.

3. The Docket 80-90 proceeding, the concomitant allocations, and the hundreds of licenses that were granted over the years through the use of the Commission's comparative hearing process, largely left the Commission's policy goals unfulfilled. This was true for various reasons. First, application backlog became acute and, when considered with the administrative hearings through which mutually-exclusive Docket 80-90 applications were forced to pass, the time from filing to commencement of operations was often prodigious. Second, a primary public interest reason to embark upon the significant additions to the Table of Allotments was to provide a more diversified FM radio service to the American public. That proved illusory. Now, the Commission is about to embark once more upon an important policy road without a full understanding or appreciation of who stands to win and to lose. Even if Docket 80-90 did, indeed, result in more ownership diversity in its early implementation, it created a significant economic hardship not only for owners new to broadcasting, but especially for those broadcast licensees - - both AM and FM - - who had survived in the past as marginal owners trying to make their living in a competitive environment. Often it was the licensees operating on the fringes of viability that tried most to bring localized service to their communities and who failed because of the addition of new stations in their service areas.

4. It is more than interesting to note that the Docket 80-90 licensees may have been as responsible for massive FCC rule changes as any other factor in the past generation. In some ways, the Commission's rush to judgment to allocate so many new assignments was a major reason that Congress passed the Telecommunications Act of 1996. Further, the stories of

procedural abuses that followed the comparative hearings designated to choose Docket 80-90 permittees are both true and legion. It became almost routine to utilize business structures that proved all too often a sham intended to garner credit under the FCC's comparative criteria. In too many cases, after a permit had been won through the taking of endless appeals, the very individuals, often women or members of racial minority groups, expected to be the primary beneficiaries of Docket 80-90, simply transferred their interests to others. These are matters which, perhaps, the Commission could not have reasonably anticipated when it first adopted Docket 80-90, but the results nevertheless reflect past action undertaken too quickly and without proper study.

5. The Commission now considers whether or not to assign many new LPFMs that could result in, as the agency acknowledges, a "very large application volume" for new licenses. Several hundred new stations (some have predicted amounts in the thousands) could spell disaster for more marginal operators. Indeed, the number of new stations that could be authorized will depend on a number of factors, including power levels and the amounts of interference protection which is to be given existing broadcasters. Thus, a new generation of competing broadcast facilities will be licensed in the name of diversity. The implications for existing broadcasters will be profound.

6. The Commission views the lack of broadcast minority ownership as a sign of homogenization. However, in point of fact, broadcast content is more diverse than ever. New York City is a perfect example. It has added three new Spanish format radio stations in the past

two years. While it is true that the Telecommunications Act of 1996 may have resulted in less diverse ownership, there is clearly more diversity in content, a matter which the Commission should consider to be significant. The question of the meaning of “diversity” is important. If by diversity, we contemplate a wider choice of quality programming offered in the market, then that diversity is well on its way to being achieved. It is a Commission mandate to encourage the widest possible range of media ideas to serve the public and to therefore provide a broad choice of informational outlets. See, e.g., United States v. Storer Broadcasting Co., 351 U.S. 192 (1956); 99 U.S. App. D.C. 369, 240 F2d 55 (1956). This continues apace, and the proliferation of media, both electronic and otherwise, has diminished the once vital concept of spectrum scarcity. Thus, existing broadcasters already face a dizzying array of media sources with which they must compete.

7. The economic impact of the proposed LPFM service would be highly debilitating to many existing licensees. Radio competes with every other entertainment medium, and it is difficult to conceive of the radio industry continuing to offer a diversity of content if the listening levels for each individual station are so low that marketers do not find them attractive. This is the economic reality of the industry. LPFM may not be a major market phenomena, and most of the licenses will undoubtedly be granted in smaller markets where increased economic competition will lay waste to the few remaining independent broadcasters. Hence, the history of Docket 80-90 will be revisited, again to the disadvantage of marginal owners. Even if the incipient LPFMs operate as non-commercial broadcasters, their economic impact on the industry

would scarcely be mitigated. Every non-commercial LPFM will still need a benefactor who will most likely be a local business owner categorizing his “donation” as advertising. That will diminish a local broadcaster’s profitability along with its ability to adequately serve its community as the FCC requires. Indeed, the prospect of an LPFM service combined with satellite digital radio could well bring the death knell for terrestrial radio and localism as we know it.

8. The addition of LPFM to the already congested radio band will likely cause severe interference to existing broadcasters, a matter of primary importance. Nevertheless, the Commission has initiated this rulemaking with what appears to be scant analysis to show that existing stations and their listeners will not be harmed. It is ironic that although the AM broadcast band criteria have been updated to provide increased protection from interference, the FM band has continued to become saturated with additional signals. Docket 80-90 and the many new higher power translators are largely responsible for this phenomena. In fact, there are nearly 12,500 radio stations with 3,500 of those added since 1980, alone!

9. The proliferation of signals has placed additional stress on the receivers’ ability to provide adequate reception of the desired signal from a broadcast station. While some may contend that contemporary receivers are better designed to handle side-band interference, technical studies conducted by the industry and by WEOK, itself, demonstrate that while many features have been added to radios, the basic sensitivity, selectivity and capture ratio of typical

FM receivers have not significantly changed over the past 20 years. Typical stereo component receiver specifications have actually declined in recent years.

10. Experience also shows that listening patterns have changed. For example, Class A FM stations were once identified as those which were thought to provide coverage to a discreet community or limited geographical area. In large part, Docket 80-90 was responsible for this image since the entire allocation scheme was premised upon “low power” service to needy communities. The entire allotment scheme was based upon providing power levels for “local” and “regional” stations, while affording adequate protection to existing facilities. In the intervening years, the definition of “local” has altered. Villages have become large towns, shopping malls have sprung up everywhere, and typical workers commute distances that have increased markedly. The typical listener still considers these distances as local and expects to hear local community stations within their operating area. This, in fact, was a clear reason that the Commission allowed 6 kW upgrades for Class A stations in the past. See, Second Report & Order, 4 FCC Rcd 6375 (1989). The “interference free zone” has already been redefined by the public, and existing broadcasters are presently facing difficulty meeting their listeners’ expectations.

11. It is highly likely that LPFM activities will further erode fringe area reception, while the introduction of additional signals providing two or three miles of coverage will be of little interest to the general public. Very low power stations (perhaps one to ten watts) could operate as useful adjuncts to college campuses, but these should be restricted to the non-



commercial portion of the FM band, and should only be considered on a strict non-interference basis. Digital broadcasting in-band will place further demands upon the available spectrum. Digital and analog signals in simultaneous transmission will most certainly require a greater band width to provide interference free reception just to maintain current coverage contour.

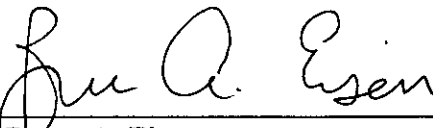
12. It takes little review to realize that the Commission has as yet failed to undertake a thorough technical evaluation of what an LPFM service would do to the existing broadcast landscape. This is troubling because surely the issue of spectrum management is of utmost concern to the agency. Nevertheless, a slap-dash entry into LPFM licensing could result in listeners encountering difficulty in hearing their favorite radio stations. Even more ominous, is the future prospect that LPFM licensees at 100 watts will want to acquire even more power in order to improve reception. Any change in the interference standards would present a very bleak future to existing FM broadcasters. This is especially true because the Commission has clearly emphasized the establishment of 100 watt and 1000 watt stations which could have a coverage area of as much as 40 miles. That would mean that, at least in 1000 watt station situations, the LPFM service area could approach that of a full-power station already on-the-air. The inequity of that scenario is terribly clear, for it would create a new FM broadcast service to compete with at least some full-power stations for audience and advertisers. The net result of the proposal is to put forth a plan for increased competition to already marginal broadcast operators and to weaken existing interference rules. If, indeed, the Commission is intent upon an LPFM service, surely it should press for one to ten watt stations and refuse the allocation of 1000 and 100 watt stations.

The possibility of opening the flood gates on the LPFM service without adequately considering protections for second and third channel interference could be technically devastating. If, as the Commission seems to believe, there is no prospect for harmful interference, then the Commission should produce appropriate studies and documentation accordingly.<sup>2</sup>

In light of the foregoing, the Commission should consider these comments carefully before implementing the LPFM service proposed in the rulemaking.

Respectfully submitted,

WEOK BROADCASTING CORPORATION

By:   
Bruce A. Eisen  
Its Attorney

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July 30, 1999

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<sup>2</sup> Presumably the National Association of Broadcasters and other organizations will submit during the pendency of this rulemaking technical studies to show just how much interference would be created by the LPFM service.

**CERTIFICATE OF SERVICE**

I, Toni R. Daluge, a secretary in the law offices of Kaye, Scholer, Fierman, Hays & Handler, LLP, do hereby certify that on this 30th day of July, 1999, a copy of the foregoing Comments of WEOK Broadcasting Corporation was hand-delivered to the following:

Chairman William E. Kennard  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Commissioner Susan Ness  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Commissioner Harold Furchtgott-Roth  
Federal Communications Commission  
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Commissioner Michael K. Powell  
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Commissioner Gloria Tristani  
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Toni R. Daluge